set out which couples a plea of possession with one that there had been no notice to quit. In view of Order 19 r. 5 it cannot be contended that this plea could be a cause of forfeiture. If, therefore, Farewell, J., was right, *Kisch v. Hawes* can only apply to a bare plea of possession by a tenant. It is to be noted that the current edition of *Bullen & Leake* has not noted *Kisch v. Hawes.*

This leaves me free to decide the question on the merits.

This really depends on what the demise was. The plaintiff, to judge by the Statement of Claim is uncertain. The arrangement between the parties was made verbally at an interview in the plaintiff's office in July, 1950. By this time memories are blurred in all probability. I think that the correspondence makes it plain what was agreed. On January 10th, 1951, the plaintiff wrote to the second defendant setting out the terms and to this version the second defendant did not demur. I find, therefore, that the agreement was for one year ending on July 31st, 1951. The fact that the house was not ready for occupation on August 1st is not material.

The second defendant is, therefore, liable for double rent. The first defendant is not concerned.

There must be judgment against the second defendant with costs for the balance of double rent, that is $900 with costs.

The first defendant was properly a party to the action until she left. Thereafter nothing has been claimed against her and she is not affected by this judgment. I should like further argument as to the question of costs so far as concerns this defendant.

Judgment against 1st defendant.

TAMBY BIN OSMAN & ORS. v. REX*

[C.C.A. (Sir Charles Murray-Aynsley, C.J. (Singapore) Mathew, C.J. (F.M.) and Knight, J.) March 28, 1952]

[Singapore — Criminal Appeal No. 20 of 1951]

Penal Code, ss. 299 and 300 — Murder — Criminal Procedure Code, s. 216 — Illustration to — Difference in the functions of a Judge and jury — Non-direction.

The first 4 appellants in this case were convicted of murder, and the fifth and sixth appellant of an offence under section 149 of the Penal Code. All the appellants were sentenced to death. At the hearing of the appeal, a number of objections were taken to the summing up, both as to misdirection on the law and the facts. The counsel for the first 4 appellants contended that the learned trial Judge failed to explain to the jury the difference between murder under section 300 of the Penal Code and culpable homicide not amounting to murder under section 299, and this was a fatal omission. Counsel further contended that the illustration to section 216 of the Criminal Procedure Code created an absolute duty to do this in all cases.

Held that the illustration to section 216 of the Criminal Procedure Code (Cap. 21) merely tries to explain in a simple way the difference in the functions of a Judge and a jury in a typical instance. The expressions culpable homicide not amounting to murder and murder are defined in terms so closely resembling each other that a Judge should not attempt to draw a distinction between them unless there is evidence from which the jury might deduce that the lesser offence of culpable homicide not amounting to murder had been committed.

Case referred to :—

(1) *Kwaku Mensah v. The King* (1946) A.C. 83.

COURT OF CRIMINAL APPEAL.

D. S. Marshall, H. E. Cashim and *K. K. Bezboruah* for first 4 appellants.

Sandy G. Pillay for 5th and 6th appellants.

L. Rayner (Crown Counsel) for the Crown.

Cur. Adv. Vult.

The judgment of the Court was delivered by :

Sir Charles Murray-Aynsley, C.J. : — In this case the first four appellants were convicted of murder, and the fifth and sixth appellants of an offence under section 149 of the Penal Code. All the appellants were sentenced to death. The proceedings arose out of the death of one J. W. Davies which was the result of a ferocious, sustained and unrelenting attack on him by a mob during the riots of December 1950.

There was abundant and uncontradicted evidence that on the day in question the deceased, who was unarmed and travelling quietly in a bus with his family, was pulled out of the bus into the street by an angry mob who were looking for Europeans to attack. Outside the bus the deceased was attacked by a number of persons armed with sticks and bottles, who beat him until he fell into a drain and with repeated blows smashed a wooden bedstead with which he had covered himself for protection and pulled it away. He was beaten on the head a number of times and sustained comminuted fracture of the skull from which he died. It was alleged by the prosecution that the first four appellants actually beat the deceased on the head, that the fifth and sixth appellants were members of the mob, and that they were armed with changkol handles and took an active part in the proceedings. At the trial the defence of all the appellants was that they were not present.

At the hearing of the appeal, a number of objections were taken to the summing up, both as to misdirection on the law and the facts. Counsel for the first four appellants contended that the summing up was defective in several respects : the learned trial

* Leave to appeal to the Judicial Committee of the Privy Council has been refused. — *Ed. M.L.J.*

Judge had not pointed out a number of inconsistencies in the evidence of the principal witness for the prosecution, discrepancies which he alleged went to the credibility of the witnesses. He referred in particular to the different accounts regarding the stopping of the taxi which conveyed the deceased to hospital, to the different versions which were given of the order in which the deceased, his wife, his child and her companion left the bus, of the differing evidence as to the number of people who were beating the deceased, of the differing accounts as to whether the deceased was lying on his face or on his back in the drain, and of the contradictory statements regarding the time of the arrival of the lorry from which changkol handles were taken. Counsel for the first four appellants contended that these discrepancies in the stories of the witnesses should have been pointed out in full to the jury. In our view, so detailed an analysis of the evidence would not necessarily have been helpful to the jury and in any event was not required by law. The jury had the opportunity of seeing and hearing the witnesses, often under long and searching cross-examination, and they were in a position to judge whether or not the witnesses were giving a substantially accurate account of what occurred on the day in question. Minor discrepancies in the evidence of witnesses tend to strengthen rather than to weaken their credibility. As regards identification, the learned trial Judge left the jury in no doubt that the identification of five of the appellant rested entirely on the witness Corporal Major Singh. In our view the summing up as regards identification left nothing to be desired. The case on the facts was fully and adequately put to the jury, and there are no grounds for our interfering with the findings of fact by the jury. A complaint by Counsel was that the learned trial Judge failed to direct the jury adequately on the onus of proof. The passage in the summing up where the learned trial Judge says :—

"Before you can find anybody guilty of anything in this case you have got to be satisfied beyond all reasonable doubt that he did that which he has been charged of doing. No defendant has to satisfy you that he did not do it."

is in our view an adequate direction on the onus of proof.

A further point made at some length by Counsel for the first four appellants was that the learned trial Judge failed to explain to the jury the difference between murder under section 300 of the Penal Code and culpable homicide not amounting to murder under section 299 and that this was a fatal omission. Counsel contended that the illustration to section 216 of the Criminal Procedure Code created an absolute duty to do this in all cases. We do not agree with this. The section deals with the duties of a jury. The illustration merely tries to explain in a simple way the difference in the functions of a Judge and a jury in a typical instance. The expressions culpable homicide not amounting to murder and murder are defined in terms so closely resembling each other that a Judge should not attempt to draw a distinction between them unless there is evidence from which the jury might deduce that the lesser offence of culpable homicide not amounting to murder had been committed. There can be no doubt that the deceased received at the hands of his assailants a ferocious and prolonged beating with weapons capable of causing fatal injuries. It cannot be contended that the attack was anything but ferocious, merciless and prolonged.

In summing up on the law the learned trial Judge said :—

"Now, that is the evidence which has been brought before you by the prosecution in this case, and on that evidence they have charged Nos. 1 to 4 with murder. And by the law of this Colony if one man does another an act, commits an act which causes him such bodily injury as the offender knows to be likely to cause death and the man dies, then the man who commits that act is guilty of murder. Now, if one man goes up to another with a thick changkol handle and delivers a series of hard blows with considerable force on the other man's head, those blows you may be perfectly sure have been struck with the intention to cause bodily injury, or if not with the intention to cause bodily injury certainly with the knowledge that bodily injury would follow, much more likely intentionally. And when you get four men all of whom armed with heavy sticks and all, one after another, striking these blows and if the victim of that assault dies, then by our law all four of those men are guilty of murder."

It is, we think, clear that the jury must have understood that if they were to find the appellants guilty of murder they would have to be satisfied, first that the appellants intended to cause bodily injury to the deceased and second, that the appellants knew that the bodily injury they were inflicting on him was likely to cause death. It is not, in our view, the duty of the trial Judge to put to the jury the alternative of returning a lesser verdict when there is no evidence which would justify the jury returning the lesser verdict. As has been said by Lord Goddard In *Kwaku Mensah v. The King*[1] at pages 91 and 92 :—

"But if on the whole of the evidence there arises a question whether or not the offence might be manslaughter only, on the ground of provocation as well as on any other ground, the Judge must put that question to the jury . . . . If on the whole of the evidence there is nothing which could entitle a jury to return the lesser verdict the Judge is not bound to leave it to them to find murder or manslaughter. But if there is any such evidence then, whether the defence has relied on it or not, the Judge must bring it to the attention of the jury, because if they accept it or are left in doubt about it the prosecution has not proved affirmatively a case of murder."

On the facts of this case no question of culpable homicide not amounting to murder could arise, and the learned trial Judge, in our view correctly, directed the

jury that this was a case of murder or nothing. When a group of people attack an unarmed and defenceless man with heavy changkol handles and beat him on the head, the only reference that can be drawn from these facts is that the appellants had at least the intention to cause bodily harm and as ordinary men must have known that the most probable effect of the injuries inflicted would be death.

The appeals of the first four appellants are dismissed.

As regards the fifth and sixth appellants, we do not consider that the direction given by the learned trial Judge on section 149 was satisfactory. To make these appellants liable there has to be proof of knowledge that the offence was likely to be committed. The jury were not directed on this point. Had they been adequately directed they might have found the appellants guilty of a lesser offence.

In these circumstances we allow their appeals and alter the convictions of appellants Nos. 5 and 6 to a conviction under section 149 as read with section 325 of the Penal Code, the least offence of which the jury on the evidence could have found them guilty, and impose a sentence of seven years rigorous imprisonment on each appellant.

The appeals of 1st four appellants dismissed.

The appeals of 5th and 6th appellants allowed and convictions altered.

LEONG MAN PAN & ANOR.
v.
PRESIDENT, THONG SOW HONG.

[App. Civ. Juris. (Sir Charles Murray - Aynsley, C.J.) July 10, 1952]

[Singapore — District Court Appeal No. 19 of 1951]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(a) — Demand of rent — Rent in arrear after demand made — "Demand" — Meaning of.

No restrictive meaning should be put upon the word "demand". The object of the demand is to give the tenant a chance to pay and, of especial importance, to let the tenant know where rent can be paid. If the tenant fails to take advantage of this, the protection of the Ordinance ceases. For the purpose of this Ordinance, rent unpaid after the demand is in arrear.

Cases referred to :—

(1) *Crouch v. Pastolfe* 83 E.R. Raym. T. 418.

(2) *Tan Yee Moh v. Varthamal* (1948) M.L.J. 55 and (C.A.) 180.

DISTRICT COURT APPEAL.

R. H. Green for the appellants.

N. N. Leicester for the respondent.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — This appeal raised a short point under the Control of Rent Ordinance, 1947, No. 25 of 1947. It is a question of the construction of section 14(1)(a). The learned District Judge held that the word "demand" had a restricted meaning, namely, that it had to satisfy the exacting requirements of the common law, as they are set out in *Crouch v. Pastolfe*[1]. The case from Perak of *Tan Yee Moh v. Varthamal*[2] was cited in support. I do not think that that case applies. Here the basis of the claim to possession is termination of the tenancy by notice to quit. Apart from section 14 of this Ordinance that would be unanswerable. However, the Legislature has given in certain cases protection to the tenant in that an order for possession can only be given if certain conditions are fulfilled. Here the rent must be in arrear for twenty-one days after demand. I do not think that it is necessary to put a restrictive meaning upon the word "demand". A demand in solemn form as required by the common law is in point of fact so obsolete that I do not think that the Legislature intended such a proceeding. The object of the demand is to give the tenant a chance to pay and, of special importance, to let the tenant know where rent can be paid. If the tenant fails to take advantage of this the protection of the Ordinance ceases. For the purpose of this Ordinance rent unpaid after the demand is in arrear.

The appeal is allowed with costs. Deposit to appellant.

Appeal allowed.

CHANG GIM HENG v. CREDIT FONCIER D'EXTREME - ORIENT & ANOR.

[App. Civ. Juris. (Sir Charles Murray - Aynsley, C.J.) March 6, 1952]

[Singapore — District Court Appeal No. 16 of 1951]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(i) and (m) — "Premises" — Definition of — Building 25 years old — Consent of landlord to erection presumed.

This was an appeal concerning the recovery of property on what is known as Siglap Estate. The property demised consisted of land on which had been erected a wooden hut which was not of such a character as to form part of the freehold and which appeared to be the property of the tenant. It stood there for at least 25 years.